



**The Comptroller General
of the United States**

Washington, D.C. 20548

Kirkpatrick

Decision

Betty L. Palaio Carr - Waiver of Overpayments -
Military Retired Pay

Matter of:

B-233390

File:

Date:

July 6, 1989

DIGEST

The widow of a deceased retired Air Force officer is entitled to waiver of indebtedness for erroneous payments of retired pay she received from the Air Force after his death when the payments should have been terminated. Waiver is granted under 10 U.S.C. § 2774, since she was without fault in failing to notify the Air Force paying organization of the death.

DECISION

In this decision, we waive the debt of Betty L. Palaio Carr resulting from her receipt of erroneous payments of retired pay from the Air Force after the death of her husband, Lieutenant Francis G. Palaio, a retired Air Force officer.

BACKGROUND

Lieutenant Palaio was retired for disability from the Air Force on May 11, 1977. He married Betty L. Palaio Carr on May 15, 1979, but did not inform the Air Force Accounting and Finance Center of the marriage and did not elect a Survivor Benefit annuity for his wife which would be payable if he predeceased her. Lieutenant Palaio died on September 14, 1983. The Air Force states that between the time of death and May 1985 it did not receive notice of the death.^{1/} Consequently, during this period it continued sending a portion of Lieutenant Palaio's monthly retired pay for deposit in a joint bank account and the balance by allotment to a credit union. If the Air Force had received notice of the death, it would have discontinued the

^{1/} A petition to us prepared by Betty L. Palaio Carr's attorney and verified by her acknowledges that the Air Force first received her notice of the death in May 1985.

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payments, since retired pay entitlement ceases when the retired member dies.

In April 1984 and again in August 1984, the Air Force sent all retired members a form entitled "Designation for Arrears of Retired Pay" (AFAFC Form T-609), on which the member was to designate the person to receive unpaid retired pay in the event of his or her death. The Air force did not receive any response from these mailings indicating that Lieutenant Palaio had died.

In May 1985, Ms. Carr returned to the Air Force an official form entitled "Retiree Certificate of Eligibility for Receipt of Retired Pay" (Form AFAFC O-671). Under the entry "Retiree's Date of Death" she wrote that Lieutenant Palaio had died September 14, 1983. The Air Force suspended the retirement account on May 28, 1985, and discontinued payments.

The payments made to Ms. Carr after her husband's death totalled \$28,591.20. The Air Force recovered \$5,785.06 deposited in the joint bank account and seeks recovery of the balance unless the waiver is granted under 10 U.S.C. § 2774. Our Claims Group denied waiver by letter of January 13, 1988, and Ms. Carr through her attorney now appeals the denial.

Ms. Carr requests waiver under 10 U.S.C. § 2774 on the basis that it would be against equity and good conscience to collect the money from her since she was without fault in the matter. She points out that the Air Force was aware that Lieutenant Palaio was married since she was issued a dependent identification. She says she accepted the payments assuming that they were survivor benefits. She also notes that the Air Force should have known that her husband had died because the Social Security Administration and the Veterans Administration were notified of his death and she received condolences from the President of the United States.

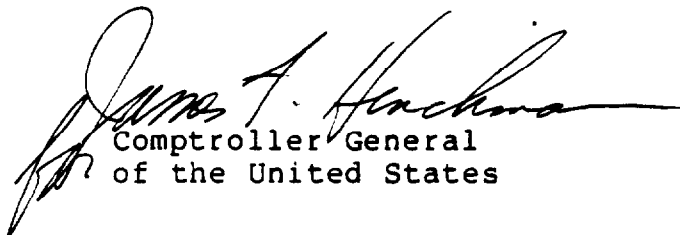
DISCUSSION

Section 2774 of title 10, United States Code provides that a claim of the United States against a person arising out of an erroneous payment of any pay to or on behalf of a member or former member of the uniformed service, the collection of which would be against equity and good conscience and not in the best interest of the United States, may be waived in whole or in part by the Comptroller General. Waiver may not be granted, however, if there exists in connection with the

claim, an indication of fault by the person receiving the erroneous payment. 10 U.S.C. § 2774(b).

The word "fault" as used in 10 U.S.C. § 2774 has been interpreted as including something more than a proven overt act or omission. Thus, fault is considered to exist if in light of all the facts it is determined that the person should have known that an error existed and taken action to have it corrected. The standard employed by the Office is to determine whether a reasonable person should have been aware that he or she was receiving payment in excess of his proper entitlement. See, generally, 4 C.F.R. Part 91; and 56 Comp. Gen. 943, 951 (1977).

In the particular circumstances of this case, we think that Mrs. Carr acted reasonably. Both the Veterans Administration and the Social Security Administration were aware of her husband's death. Organizations of former service members sent condolences. The President of the United States sent her a letter expressing his condolences. We do not think it unreasonable that a person who, although mistakenly, believed she was entitled to a survivor annuity did not question the direct deposits which the Air Force continued to make after her husband's death when various agencies of the government had been informed of that death. Accordingly, we waive Mrs. Carr's debt in the amount of \$28,591.20. Mrs. Carr should be informed of her right under 10 U.S.C. § 2774(c) to claim any amounts of the debt which have been refunded.


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of the United States